

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION**

KOHLER CO.,

Plaintiff,

v.

AS AMERICA, INC. d/b/a AMERICAN
STANDARD BRANDS,

Defendant.

Case No. _____

COMPLAINT

Plaintiff, Kohler Co., for its Complaint against Defendant, AS America, Inc. d/b/a American Standard Brands, hereby states as follows:

PARTIES AND JURISDICTION

1. Kohler Co. is a Wisconsin corporation with its principal place of business at 444 Highland Drive, Kohler, Wisconsin 53044.
2. Upon information and belief, AS America, Inc. d/b/a American Standard Brands is a Delaware corporation with a principal place of business at 1 Centennial Avenue, Piscataway, New Jersey 08855, and has substantial contacts with this judicial district due to its advertising, distribution, and sale of its products throughout the United States, including in the State of Wisconsin. Personal jurisdiction exists over AS America, Inc. d/b/a American Standard Brands because it is engaged in substantial and not isolated activities in the State of Wisconsin, Wis. Stat. § 801.05(1)(d), and because it committed acts both inside and outside Wisconsin that caused Plaintiff Kohler Co. damage inside this state, Wis. Stat. § 801.05(3), (4). Solicitation or service activities are carried on in Wisconsin by or on behalf of AS America,

Inc. d/b/a American Standard Brands, and products, materials, or things processed, serviced, or manufactured by it were used or consumed within Wisconsin in the ordinary course of trade.

3. This Court has jurisdiction because: (a) this is an action brought under the Trademark Laws of the United States (15 U.S.C. §§ 1051, *et seq.*), jurisdiction being conferred in accordance with 15 U.S.C. § 1121 and 28 U.S.C. § 1338(a); (b) this action includes claims of unfair competition joined with a substantial and related claim arising under the Trademark Laws of the United States, jurisdiction being conferred in accordance with 28 U.S.C. § 1338(b); (c) this is a civil action between citizens of different states in which the value of the amount in controversy exceeds seventy-five thousand dollars (\$75,000.00), exclusive of interest and costs, jurisdiction being conferred in accordance with 28 U.S.C. § 1332(a); and (d) this action includes certain state law claims that are so related to claims within such original jurisdiction that they form part of the same case or controversy, supplemental jurisdiction being conferred in accordance with 28 U.S.C. § 1367.

4. Venue is proper in this Court under 28 U.S.C. § 1391(b) and (c).

FACTS

Kohler's ONE Trademark and Products

5. Founded in 1873, Kohler Co. ("Kohler") is a leading manufacturer of plumbing and bathroom products in the United States.

6. Since 2001, Kohler, through its Kallista division, has manufactured, advertised, and sold plumbing and bathroom products, including faucets, bath spouts, hand showers, shower heads, bidet faucets, valve trim, water control valves, towel bars, robe hooks, and toilet tissue holders, throughout the United States under the arbitrary and distinctive trademark ONE. Attached as Exhibit A are representative examples of Kohler's ONE products.

7. As a result of Kohler's continuous and successful promotion and sale of products under its ONE trademark, Kohler's ONE trademark has become recognized in the marketplace as signifying Kohler's products, and now represents an extraordinarily valuable goodwill owned by Kohler.

Defendant and Its Unlawful Activities

8. AS America, Inc. d/b/a American Standard Brands ("American Standard") manufactures, advertises, and sells plumbing and bathroom products in the United States.

9. On January 25, 2006, American Standard filed with the United States Patent and Trademark Office an intent-to-use application to register the trademark ONE for "faucets, bath and shower valves", Application Serial No. 78/799,221.

10. On January 29, 2007, Kohler timely objected to American Standard's application to register the trademark ONE by filing an opposition with the United States Patent and Trademark Office, Opposition No. 91175700. As grounds for the opposition, Kohler asserted that American Standard's proposed use of the trademark ONE was likely to cause confusion, mistake, or deception with Kohler's prior use of the identical trademark ONE for identical products.

11. On January 9, 2008, while a motion to compel was pending against it in that opposition proceeding, American Standard expressly abandoned its application to register the trademark ONE, without Kohler's consent.

12. On February 6, 2008, the United States Patent and Trademark Office's Trademark Trial and Appeal Board entered judgment in favor of Kohler and against American Standard in the opposition over American Standard's application to register the trademark ONE, Opposition No. 91175700.

13. Despite expressly abandoning its trademark application and having judgment entered against it, American Standard is now manufacturing, advertising, and selling plumbing and bathroom products in connection with the trademark ONE. Attached as Exhibit B are representative examples of American Standard's use of the trademark ONE.

14. American Standard continues use of ONE as a trademark in connection with the manufacture, advertising, and sale of plumbing and bathroom products with full knowledge of Kohler's prior use of the trademark ONE for identical products.

15. American Standard's aforesaid activities are without Kohler's consent.

16. On February 6, 2009, Kohler sent American Standard a letter demanding that it cease use of the trademark ONE in connection with plumbing and bathroom products.

17. In a letter dated March 6, 2009, counsel for American Standard stated that American Standard would not cease using the trademark ONE.

18. As of the filing date of this Complaint, American Standard continues to manufacture, advertise, and sell plumbing and bathroom products in connection with the trademark ONE.

COUNT I
(UNFAIR COMPETITION AND FALSE DESIGNATION OF ORIGIN)

19. Kohler re-alleges paragraphs 1 through 18.

20. As a result of its unauthorized use of the trademark ONE in connection with the manufacture, advertising, and sale of plumbing and bathroom products, American Standard is likely to cause confusion, mistake, or deception, in that consumers are likely to believe that American Standard or its products are sponsored by, or connected or affiliated with, Kohler or Kohler's ONE products. Thus, American Standard's acts constitute unfair competition and a

false designation of origin, in violation of the Trademark Laws of the United States, 15 U.S.C. § 1125(a).

21. By reason of American Standard's acts, Kohler has suffered and will continue to suffer damage and injury to its business, reputation, and goodwill, and will sustain loss of revenues and profits.

22. American Standard's actions greatly and irreparably damage Kohler, and will continue to damage Kohler unless restrained by this Court; therefore, Kohler is without an adequate remedy at law.

COUNT II
(TRADEMARK INFRINGEMENT AND UNFAIR
COMPETITION UNDER WISCONSIN COMMON LAW)

23. Kohler re-alleges paragraphs 1 through 22.

24. As a result of its unauthorized use of the trademark ONE in connection with the manufacture, advertising, and sale of plumbing and bathroom products, American Standard is likely to cause confusion, mistake, or deception, in that consumers are likely to believe that American Standard or its products are sponsored by, or connected or affiliated with, Kohler or Kohler's ONE products. Thus, American Standard's acts constitute trademark infringement and unfair competition in violation of the common law of the State of Wisconsin.

25. By reason of American Standard's acts, Kohler has suffered and will continue to suffer damage and injury to its business, reputation, and goodwill, and will sustain loss of revenues and profits.

26. American Standard's acts greatly and irreparably damage Kohler, and will continue to damage Kohler unless restrained by this Court; therefore, Kohler is without an adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Kohler Co., prays that:

1. Defendant, its officers, agents, servants, employees, attorneys, representatives, successors and assigns, and any and all persons acting by, through or under the authority of Defendant, be permanently enjoined and restrained from:

(a) using the ONE trademark, or any colorable imitation of the ONE trademark, or any name or trademark that is confusingly similar to the ONE trademark;

(b) doing any act or engaging in any conduct that is likely to diminish the value and goodwill owned by Plaintiff in its ONE trademark; and

(c) doing any other act or thing likely to induce the belief that Defendant's business or products are in any way connected with Plaintiff's business or products, or are sponsored or approved by Plaintiff.

2. Defendant be required:

(a) to account for and pay to Plaintiff all gains, profits, enrichments, and advantages wrongfully derived by Defendant through its trademark infringement, false designation of origin, and unfair competition, including prejudgment interest, in accordance with 15 U.S.C. § 1117(a) and the laws of the State of Wisconsin;

(b) to pay to Plaintiff the actual damages suffered by Plaintiff through Defendant's trademark infringement, false designation of origin, and unfair competition, including prejudgment interest, in accordance with 15 U.S.C. § 1117(a) and the laws of the State of Wisconsin;

(c) to pay to Plaintiff three times the damages suffered by Plaintiff by reason of intentional and unlawful acts of Defendant, in accordance with 15 U.S.C. § 1117(a);

(d) to reimburse Plaintiff for its reasonable attorneys' fees and costs incurred in connection with this action, as provided in 15 U.S.C. § 1117; and

(e) to file with this Court and serve on counsel for Plaintiff within thirty (30) days after entry of an injunction issued by this Court, a sworn written statement as provided in 15 U.S.C. § 1116.

3. This Court award Plaintiff such further relief as deemed just and equitable.

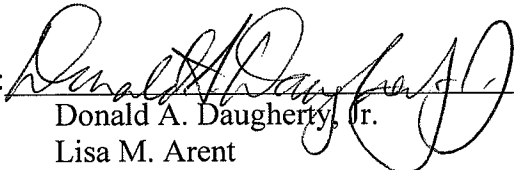
JURY DEMAND

Plaintiff hereby demands trial by jury for all issues so triable.

Respectfully submitted,

WHYTE HIRSCHBOECK DUDEK S.C.

Dated: July 20, 2009

By: 
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Attorneys for Plaintiff, Kohler Co.

EXHIBIT A

KALLISTA

ONE

Sophisticated modern, the One collection by Kallista infuses minimalist design elements with the essence of warmth and generosity. Embracing the discipline of geometry simply and completely, the One collection blends precision with thoughtfully proportioned components.

BATHROOM PRODUCTS



Faucets (19)



Showering (22)



Accessories (6)

KITCHEN PRODUCTS



Faucets (6)

KALLISTA

ONE

[View Page-by-Page](#)[View All](#)

ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Basin Set, Low-Spout Cross Handles	P24401-CR	See Details	\$791.00*



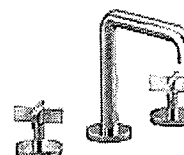
ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Basin Set, Low-Spout, Lever Handles	P24401-LV	See Details	\$791.00*



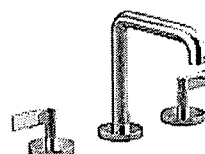
ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Basin Set, Tall Spout, Cross Handles	P24402-CR	See Details	\$791.00*



ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Basin Set, Tall Spout, Lever Handles	P24402-LV	See Details	\$791.00*



ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
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Wall-Mounted Basin
Set, 7-1/8" Spout,
Cross Handles

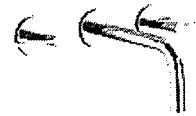
P24410-CR See Details

\$777.00*



ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Wall-Mounted Basin Set, 7-1/8" Spout, Lever Handles	P24410-LV	See Details	\$777.00*



ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Wall-Mounted Basin Set, 11-1/8" Spout, Cross Handles	P24411-CR	See Details	\$838.00*



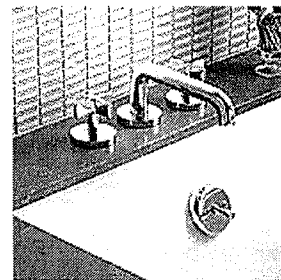
ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Wall-Mounted Basin Set, 11-1/8" Spout, Lever Handles	P24411-LV	See Details	\$838.00*



ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Deck-Mounted Bath Set, Low-Spout, Cross Handles	P24404-CR	See Details	\$969.00*



ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Deck-Mounted Bath Set, Low-Spout, Lever Handles	P24404-LV	See Details	\$969.00*



ONE

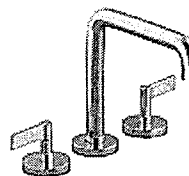
PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Deck-Mounted Bath Set, Tall Spout, Cross Handles	P24405-CR	See Details	\$969.00*

KALLISTA

NO PHOTO AVAILABLE

ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Deck-Mounted Bath Set, Tall Spout, Lever Handles	P24405-LV	See Details	\$969.00*



ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Deck Diverter, Cross Handle	P24420-CR	See Details	\$331.00*



ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Deck Diverter, Lever Handle	P24420-LV	See Details	\$331.00*

KALLISTA

NO PHOTO AVAILABLE

ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Wall-Mounted Bath Set, Cross Handles	P24425-CR	See Details	\$872.00*

KALLISTA.

NO PHOTO AVAILABLE

ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Wall-Mounted Bath Set, Lever Handles	P24425-LV	See Details	\$872.00*

KALLISTA.

NO PHOTO AVAILABLE

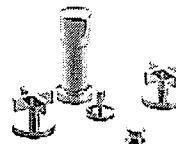
ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Wall-Mounted Bath Spout	P24414-00	See Details	\$238.00*



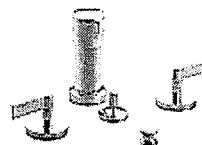
ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Bidet Set, Vertical Spray, Cross Handles	P24406-CR	See Details	\$909.00*



ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Bidet Set, Vertical Spray, Lever Handles	P24406-LV	See Details	\$909.00*



ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Wall-Mounted Showerhead with Arm	P24471-00	See Details	\$355.00*



ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Raindome	P24473-00	See Details	\$1,182.00*



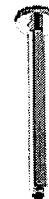
ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Wall-Mounted Showerarm	P24474-00	See Details	\$366.00*



ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Ceiling-Mounted Showerarm	P24476-00	See Details	\$247.00*



ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Wall Supply Elbow	P24452-00	See Details	\$98.00*



ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Fixed Wall Bracket	P24453-00	See Details	\$98.00*



ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Slidebar	P24456-00	See Details	\$443.00*



ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Thermostatic Valve Trim, Cross Handles	P24421-CR	See Details	\$744.00*

KALLISTA.

NO PHOTO AVAILABLE

ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Thermostatic Valve Trim, Cross Handle	P24422-CR	See Details	\$744.00*

KALLISTA.

NO PHOTO AVAILABLE

ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Thermostatic Valve Trim, Lever Handle	P24422-LV	See Details	\$744.00*



ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Thermostatic Valve Trim, Lever Handles	P24421-LV	See Details	\$744.00*

KALLISTA.

NO PHOTO AVAILABLE

ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Volume Control Valve Trim, Cross Handle	P24423-CR	See Details	\$274.00*



ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Volume Control Valve Trim, Lever Handle	P24423-LV	See Details	\$274.00*



ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Three-way Transfer Valve Trim, Cross Handle	P24483-CR	See Details	\$343.00*

KALLISTA.

NO PHOTO AVAILABLE

ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Three-way Transfer Valve Trim, Lever Handle	P24483-LV	See Details	\$343.00*



ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Pressure Balance Valve Trim, Cross Handles	P24415-CR	See Details	\$610.00*



ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Pressure Balance Valve Trim, Lever Handles	P24415-LV	See Details	\$610.00*



ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Pressure Balance Valve Trim with Diverter, Cross Handle	P24416-CR	See Details	\$668.00*



ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Pressure Balance Valve Trim with Diverter, Lever Handle	P24416-LV	See Details	\$668.00*



ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Wand Handshower	P24443-00	See Details	\$265.00*



ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Multi-Function Handshower	P24445-00	See Details	\$426.00*



ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Single-Function Handshower	P24446-00	See Details	\$426.00*



ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Towel Bar, 24"	P34401-00	See Details	\$318.00*



ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Towel Bar, 18"	P34402-00	See Details	\$286.00*



ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Double Towel Bar, 32"	P34403-00	See Details	\$397.00*



ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Hook	P34406-00	See Details	\$93.00*



ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Hook	P34407-00	See Details	\$93.00*



ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Toilet Paper Holder	P34408-00	See Details	\$156.00*



ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Deck-Mounted Bridge Kitchen Faucet, Cross Handles	P25202-CR	See Details	\$730.00*

KALLISTA

NO PHOTO AVAILABLE

ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Deck-Mounted Bridge Kitchen Faucet, Lever Handles	P25202-LV	See Details	\$730.00*

KALLISTA

NO PHOTO AVAILABLE

ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Wall-Mounted Bridge Kitchen Faucet, Cross Handles	P25203-CR	See Details	\$860.00*

KALLISTA

NO PHOTO AVAILABLE

ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Wall-Mounted Bridge Kitchen Faucet, Lever Handles	P25203-LV	See Details	\$860.00*

KALLISTA

NO PHOTO AVAILABLE

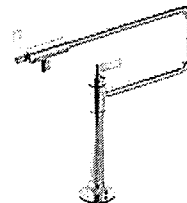
ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Wall-Mounted Potfiller	P23080-00	See Details	\$948.00*



ONE

PRODUCT	MODEL #	DIMENSIONS	STARTING AT
Deck-Mounted Potfiller	P23085-00	See Details	\$1,053.00*



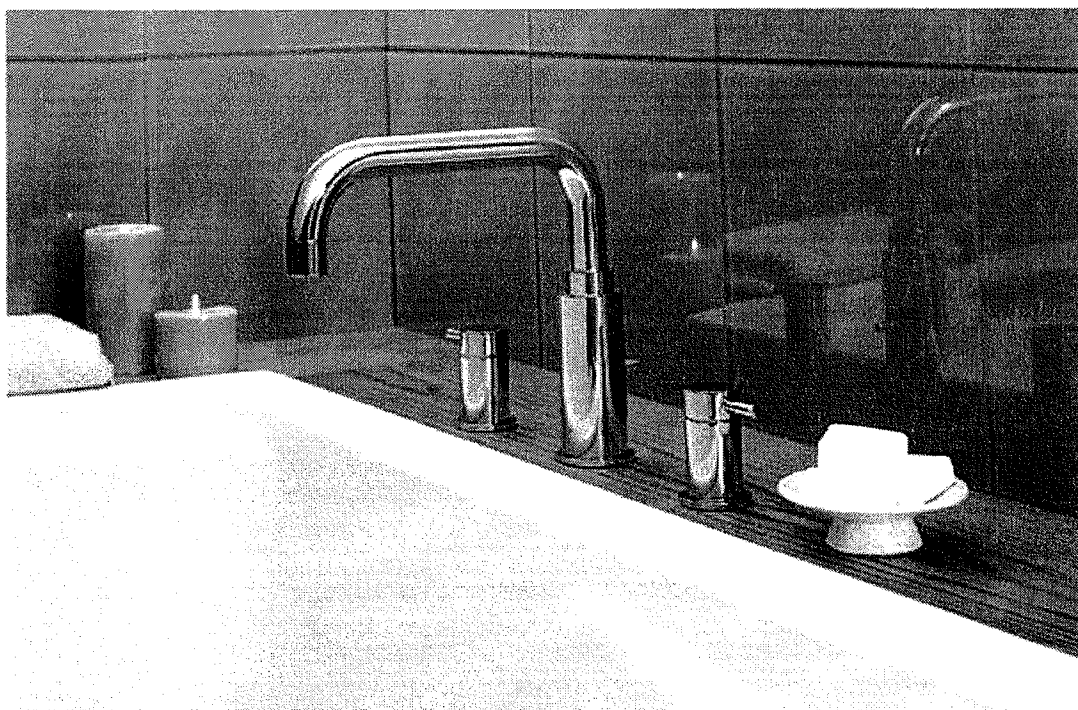
* All prices are Manufacturer's Suggested List Prices in U.S. dollars. The price you pay at your local supply outlet may be different than the Manufacturer's Suggested List Price. These prices supersede previous prices and are subject to change without notice. These prices do not include shipping. Any sales tax applicable will be added to the prices.

[View Page-by-Page](#)[View All](#)

EXHIBIT B

American Standard
Style That Works Better

The One Collection



The unique styling of the One collection is minimalist style for your modern bath. Without excess or ornamentation this collection's stoic lines and graceful function are the perfect fittings for a minimalist bathroom retreat. The One collection consists of bidet faucets, deck-mounted tub fillers, bathroom sink faucets, vessel faucets, bathroom accessories, and bath/shower faucets. All One collection bathroom sink and wall mounted faucets are WaterSense® certified.

[Learn More about the SpeedConnect™ Drain](#)
[View Water Saving Products](#)
[Learn More about WaterSense®](#)

Explore the Collection:

There are **22** products in
The One Collection.

Product Examples:



Compact Cadet® 3 FloWise™ 1pc Toilet w/
Seat

\$542 - \$812*

View All: [Toilets](#)



One Widespread Bathroom Faucet

\$352 - \$527*

View All: [Bathroom Faucets](#)



ONE™ Towel Ring

\$65 - \$81*

View All: [Bathroom Accessories](#)

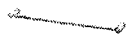
* based on color and finish



The One Collection

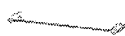
1 2

[View All Products](#)



ONE™ 24" Towel Bar

\$89 - \$111 *



ONE™ 18" Towel bar

\$85 - \$106 *



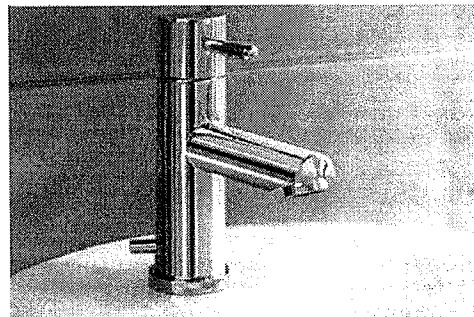
ONE™ Towel Ring

\$65 - \$81 *



ONE™ Toilet Paper Holder

\$63 - \$79 *



REFINE YOUR SEARCH

All Categories

One

Low price range

High price range

Keyword

[SEARCH](#)

The One Collection

The unique styling of the One collection is minimalist style for your modern bath. Without excess or ornamentation this collection's stoic lines and graceful function are the perfect fittings for a minimalist bathroom retreat. The One collection consists of bidet faucets, deck-mounted tub fillers, bathroom sink faucets, vessel faucets, bathroom accessories, and bath/shower faucets. All One collection bathroom sink and wall mounted faucets are WaterSense® certified.

[Learn more about The One Collection](#)



ONE™ Robe Hook

\$37 - \$46 *



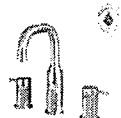
One Deck Mount Tub Filler

\$490 - \$920 *



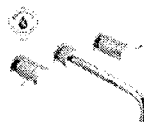
One Fixture-Mounted Bidet Fitting Faucet

\$446 - \$835 *



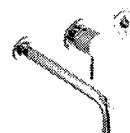
One Widespread Bathroom Faucet

\$352 - \$527 *



One 2 Handle Wall Mount Lavatory Faucet

\$352 - \$527 *



One 1 Handle Wall Mount Lavatory Faucet

\$352 - \$527 *



One Single Control Vessel Lavatory Faucet

\$298 - \$487 *



One Bath / Shower Trim Kit with Built-In Diverter

\$298 - \$447 *

* based on color and finish

1 2

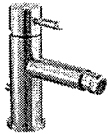
[View All Products](#)



The One Collection

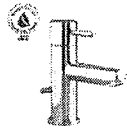
1 2

[View All Products](#)



One Monoblock Bidet Fitting Faucet

\$278 - \$418 *



One Single Control Lavatory Faucet

\$32 - \$406 *



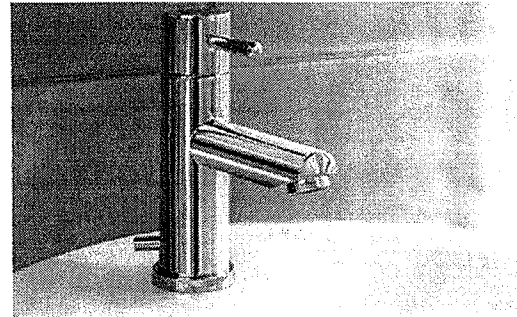
One Bath / Shower Trim Kit

\$170 - \$405 *



One Complete Hand Shower Kit

\$244 - \$365 *



REFINE YOUR SEARCH

All Categories

One

Low price range

High price range

Keyword

SEARCH

The One Collection

The unique styling of the One collection is minimalist style for your modern bath. Without excess or ornamentation this collection's stoic lines and graceful function are the perfect fittings for a minimalist bathroom retreat. The One collection consists of bidet faucets, deck-mounted tub fillers, bathroom sink faucets, vessel faucets, bathroom accessories, and bath/shower faucets. All One collection bathroom sink and wall mounted faucets are WaterSense® certified.

[Learn more about The One Collection](#)



ONE 2-Handle Thermostatic Valve Trim Kit

\$192 - \$288 *



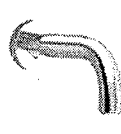
Valve Only Trim Kit with Built-in Diverter

\$190 - \$285 *



ONE Central Thermostatic Valve Trim Kit

\$133 - \$198 *



One Brass Tub Spout

\$80 - \$120 *



ONE Diverter Valve Trim Kit

\$75 - \$113 *



ONE On / Off Volume Control Valve Trim Kit

\$50 - \$75 *

* based on color and finish

1 2

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